

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

**ROBERT SMITH, on behalf of himself
and others similarly situated,**

Plaintiff,

v.

ZOLL MEDICAL CORPORATION,

Defendant.

Case No. 1:23-cv-10575

**JOHN PRIDDY, on behalf of himself
and others similarly situated,**

Plaintiff,

v.

ZOLL MEDICAL CORPORATION,

Defendant.

Case No. 1:23-cv-10588

PLAINTIFFS' UNOPPOSED MOTION TO CONSOLIDATE CASES

Pursuant to Federal Rule of Civil Procedure 42(a)(2), Plaintiffs in the above-captioned cases, individually and on behalf of all others similarly situated, respectfully move for an Order consolidating the following matters (the “Related Actions”) now pending before this Court against Defendant ZOLL Medical Corporation (“ZOLL”):

- *Smith v. ZOLL Medical Corporation*, No. 1:23-cv-10575 (“*Smith Action*”);
- *Priddy v. ZOLL Medical Corporation*, No. 1:23-cv-10588 (“*Priddy Action*”);
- *McGilberry v. ZOLL Medical Corporation*, No. 1:23-cv-10597 (“*McGilberry Action*”);
- *Jemison v. ZOLL Medical Corporation*, No. 1:23-cv-10598 (“*Jemison Action*”);
- *Pettaway v. ZOLL Medical Corporation*, No. 1:23-cv-10605 (“*Pettaway Action*”);
- *Gerth v. ZOLL Medical Corporation*, No. 1:23-cv-10616 (“*Gerth Action*”);
- *Calvert v. ZOLL Medical Corporation*, No. 1:23-cv-10620 (“*Calvert Action*”);
- *Lennon v. ZOLL Medical Corporation*, No. 1:23-cv-10640 (“*Lennon Action*”);
- *Becker v. ZOLL Medical Corporation*, No. 1:23-cv-10653 (“*Becker Action*”);
- *Jury v. ZOLL Medical Corporation*, No. 1:23-cv-10657 (“*Jury Action*”);
- *Bendriss v. ZOLL Medical Corporation*, No. 1:23-cv-10660 (“*Bendriss Action*”);
- *Prosky v. ZOLL Medical Corporation*, No. 1:23-cv-10675 (“*Prosky Action*”);
- *Brown v. ZOLL Medical Corporation*, No. 1:23-cv-10702 (“*Brown Action*”);
- *Pacholczak v. ZOLL Medical Corporation*, No. 1:23-cv-10755 (“*Pacholczak Action*”); and,

- *McMahon v. ZOLL Medical Corporation*, No. 1:23-cv-10784 (“*McMahon Action*”).

As set forth fully in Plaintiffs’ memorandum of law in support, Plaintiffs bring these actions on behalf of themselves, and others similarly situated, alleging ZOLL’s unlawful and unauthorized disclosure of their personally identifiable information (PII) and/or protected health information (PHI) caused them damages. All the Related Actions arise out of the same operative facts—namely the same cybersecurity incident, which Plaintiffs allege allowed a third-party’s unauthorized access to an internal computer network housing sensitive data maintained by ZOLL. The Related Actions assert similar causes of action, define overlapping classes, and seek similar remedies as against a common defendant.

Plaintiffs further request that the Court adjourn all deadlines for ZOLL to file a responsive pleading in the Related Actions pending the appointment of interim leadership counsel for Plaintiffs.¹ And Plaintiffs request a schedule for the filing of a consolidated complaint.

¹ Plaintiffs anticipate filing a motion for the appointment of an interim leadership structure pursuant to Fed. R. Civ. P. 23(g) within fourteen (14) days and will try to reach agreement on a proposed interim leadership structure for this litigation. If Plaintiffs’ Counsel are unable to agree on such a structure, they will engage the Court in Rule 23(g) motion practice relating thereto.

Plaintiffs' Counsel have conferred with counsel for ZOLL and counsel for plaintiffs in the Related Actions about this motion. Neither ZOLL nor the remaining plaintiffs oppose consolidation of the Related Actions under Fed. R. Civ. P. 42(a).²

Dated: April 20, 2023

Respectfully Submitted by,

s/ Jean S. Martin

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(admitted *pro hac vice*)

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² ZOLL, however, expressly reserves all of its rights, remedies, defenses, objections and arguments, and has not waived any rights. ZOLL does not concede the truth of Plaintiffs' allegations or that certification of the putative class or classes is proper under Fed. R. Civ. P. 12, and ZOLL reserves the right to oppose class certification and to assert defenses on all available grounds, including the absence of questions of law and fact common to the putative class or classes.

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Counsel for Plaintiff John Priddy

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

Undersigned counsel certifies that she has conferred with counsel for ZOLL in a good faith effort to resolve or narrow the issues raised by this motion with the following result: counsel for the defendant indicated that ZOLL does not oppose to consolidation of the Related Actions.

s/ Jean S. Martin

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2023, I electronically filed Plaintiffs' Unopposed Motion to Consolidate and Incorporated Memorandum of Law in Support with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Additionally, a copy of this document will be served via electronic mail upon counsel of record in the Related Actions on April 20, 2023.

s/ Jean S. Martin